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10/741,793

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Alan E. Hairsine

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/741,793

## Applicant(s)

HAIRSINE ET AL.

## Examiner

Anthony Weier

## Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 12-14, 18-21, 24-26, 35-68 and 71-84 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 19, 35-54, 57 and 58 is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 18, 20, 21, 24-26, 55, 56, 59-68 and 71-84 is/are rejected.
- 7) ☒ Claim(s) 12-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-848)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims drawn to an invention nonelected with traverse in the reply filed on 2/20/07.

***Claim Rejections - 35 USC § 112, 2nd paragraph***

- 2 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 80-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 80-84 are indefinite in that same refer to "the depression" in the singular when the independent claims refer to the option of singular or multiple depressions. As such, it is not clear if Applicant intends to limit claims 80-84 to the option of only one depression being employed.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 21, 24, 25, and 81 are rejected under 35 U.S.C. 102(b) as being anticipated by Tranin.

Tranin discloses a process of breaking egg yolks comprising dropping an egg (containing both yolk and at least some white) into a device having many depressions made up of a plurality of segments (e.g. hooks, 19) having sharp edges to rupture the yolk sacs, said segments being separated from one another such that openings are provided to allow the egg material to pass. In addition, said hooks also extend downward (from the points of same).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21, 24-26, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tranin.

If it is shown that Tranin does not disclose said hooks extending downwardly in the manner intended with respect to the instant claims, the following should be noted. Tranin allows the hooks to vary in disposition and shape so long as same form a hook that is 45 degrees from perpendicular (page 2, lines 67-74). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the hooks into any "45 degree" configuration as a matter of preference.

7. Claims 1, 2, 12, 13, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tranin taken together with Stearns et al.

Tranin is silent regarding depositing the egg material including ruptured egg yolks,

egg white and shell portions into molds and further cooking as called for in the instant claims. Stearns et al (e.g. Fig. 2; cols 2 and 3) teaches a process wherein eggs including yolks previously broken are deposited into a plurality of mechanically moving molds (e.g. irregular shaped) wherein said molds are arranged side by side as called for in claim 12, said eggs then being cooked in said molds, and subsequently cooled (e.g. frozen). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included the added shaping and cooking of the eggs in individual molds as a matter of preference such as, for example, to mass produce individualized egg products for commercial sale.

8. Claims 18, 20, 59-68, 71-73, 75-79, 83, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over either (1) Tranin taken together with Stearns et al and Shimizu or (2) Tranin taken together with Stearns et al, Shimizu, and either one of Davis or Glasser et al.

The claims further call for said mold to comprise a first depression and a second depression within said first. However, such molds for eggs are notoriously well known to aid in providing demarcation between the yolk and white portions as taught, for example, in any one of Davis, Glasser et al, and Shimizu (see Figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same to provide a product having a particular desired aesthetic (uniformity, shape, color distribution, etc.)

The claims further call for the bottom surface of the mold to have a depth that varies irregularly. It should be noted that Shimizu further discloses molds are irregular

along the bottom surface (see Fig. 3). Likewise, Glasser et al and Davis teach mold bottoms that are irregular (having projections, rounded areas, etc.; see Figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such shaping molds as a matter of preference with regard to the desired aesthetics of the final product.

Shimizu (cols. 2 and 3) further teaches a process wherein shell eggs are mechanically and automatically conveyed in a closed loop of linked molds (e.g. col. 1, lines 51-55; col. 2, lines 8-13; col. 3, line 30- col. 4, line 8) and subjected to breaking with cutters (8; i.e. knives). Tranin is silent regarding the mechanism employed in breaking the eggs used and conveyance as claimed. It would have been further obvious to have employed same as matter of preference of a known alternative for delivering egg material to and from Tranin.

The claims further call for said molds to be irregularly shaped. However, it is well known to provide irregularly shaped molds for preparing eggs as set forth in Stearns et al (col. 3, lines 1-19). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such shaping molds as a matter of preference with regard to the desired aesthetics of the final product.

The claims further call for the depression of the mold being asymmetric and that the molds have a symmetrical outline including a rounded outline. However, such modification in shape would have been further obvious as a matter of preference with regard to the desired aesthetics of the final product.

The claims further call for the use of plural edges within a single plate. However,

absent a showing of unexpected results, it would have been further obvious to have increased the number of such pins to increase the number of ruptures as a result effective variable.

It should be noted that Shimizu further discloses molds that have flat bottom depressions and beveled edges surrounding said depressions as called for in claims 76 and 77 (see Fig. 2). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such shaping molds as a matter of preference with regard to the desired aesthetics of the final product.

9. Claims 55, 56, and 82 are rejected under 35 USC 103(a) as being unpatentable over Dunckel taken together with any one of Davis, Glasser et al, and Shimizu.

Dunckel discloses a process wherein eggs are mechanically and automatically conveyed and subjected to breaking with knives (92) wherein the contents of same (including yolks) are deposited into a plurality of molds (each having a symmetrical shape) all connected, said eggs then being cooked after moving said molds to a heating area, and said eggs being removed from said pans, and subsequently cooled. Dunckel further discloses an embodiment wherein the yolks are broken through mixing to create a scrambled egg mixture that is deposited in the molds (cols. 2-4; Figures).

The claims further call for said mold to comprise a first depression including a first sloped region extending downwardly to a planed region and a second depression within said first, said second depression including a second sloped region extending downwardly to a rounded region. However, such molds designs for eggs are notoriously well known to aid in providing demarcation between the yolk and white

portions as taught, for example, in any one of Davis (e.g. Fig. 1, first depression inside of element 4; sloped area in vicinity of element 5; second depression encompassed by element 1 having a sloped region along projection 1 which extended into a slightly rounded bottom at element 3), Glasser et al (Fig. 2, first depression encompassed by flat area in the vicinity of element 2 label; sloped region extending to a planned region in vicinity of element 4 label; the second depression including a sloped region extending to the rounded bottom of the depression), and Shimizu (e.g. Fig. 3; wall of the first depression is at a 90 degree slope to flat area at 13a wherein the second depression at 13c includes a sloping area and rounded bottom. It would have been obvious to one having ordinary skill in the art at the time of the invention to have included same to provide a product having a particular desired aesthetic (uniformity, shape, color distribution, etc.)

10. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over either (1) Tranin taken together with Stearns et al, Shimizu, and Beale et al or (2) Tranin taken together with Stearns et al, Shimizu, Beale et al, and either one of Davis or Glasser et al.

Claim 74 further calls for said mold to have a planar surface that is formed of a non-stick, food grade material. However, it is notoriously well known to provide cooking utensils having such attributes as taught, for example, by Beale et al (e.g. Abstract). it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same in the mold of Shimizu to provide easier removal of the molded food article and to ensure that the coating material itself is consumably



safe if particles of same should fall into the food product.

***Allowable Subject Matter***

11. Claims 12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record neither discloses nor teaches the rupturing device as set forth in the instant claims wherein the egg are individually broken and the contents of each are separately passed to individual molds. Tranin teaches away from same wherein the contents of many eggs are mixed together after breaking.

***Response to Arguments***

13. Applicant's arguments filed 2/2/09 have been fully considered but they are not persuasive except regarding rejections of claims involving Stearns et al taken together with WO 87/03171 and WO 87/03171 alone. Applicant has also overcome the previously applied rejections under 35 USC 112, 1st and 2nd paragraphs.

All other arguments have been addressed in view of the rejections as set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

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Anthony Weier  
April 3, 2009

